APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/678,692	10/03/2000	Lee Codel Lawson Tarbotton	NAI1P160/00.110.01	6816

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EXAMINER
BURGESS, BARBARA N

ART UNIT	PAPER NUMBER
2157	

DATE MAILED: 12/23/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	09/678,692	TARBOTTON ET AL.
	Examiner	Art Unit	
	Barbara N Burgess	2157	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _03 October 2003_.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-63_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-63_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☐ All b)☐ Some * c)☐ None of:
      1.☐ Certified copies of the priority documents have been received.
      2.☐ Certified copies of the priority documents have been received in Application No. _____.
      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
      application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application)
since a specific reference was included in the first sentence of the specification or in an Application Data Sheet.
37 CFR 1.78.
    a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific
reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _7_.

4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 102

1.   The following is a quotation of the appropriate paragraphs of 35

U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section
> 122(b), by another filed in the United States before the invention by the applicant for patent or
> (2) a patent granted on an application for patent by another filed in the United States before
> the invention by the applicant for patent, except that an international application filed under
> the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an
> application filed in the United States only if the international application designated the United
> States and was published under Article 21(2) of such treaty in the English language.

2.   Claims 1-63 rejected under 35 U.S.C. 102(e) as being anticipated by

Hodges et al (hereinafter, "Hodges", 6,035,423).

As per claims 1, 16, 19, 22, 37, 40, 43, 58, 61, Hodges discloses a method of

distributing a computer file from a source computer to a plurality of target

computers via a computer network, said method comprising the steps of:

- Determining a demand level upon said source computer for downloading of

  said computer file to said plurality of target computers (column 4, lines 48-55,

  column 5, lines 1-5, 24-27, column 7, lines 33-35);

- Sending at least one download controlling message from said source

  computer to at least one of said plurality of target computers (column 5, lines

  22-30, column 7, lines 33-35, column 10, lines 20-45);

- Controlling downloading of said computer file by said at least one of said plurality of target computers in dependence upon said download controlling message (column 11, lines 58-67);

- Adjusting said downloading controlling message in dependence upon said demand level (column 11, lines 58-67).

As per claims 2, 17, 20, 23, 38, 41, 44, 59, 62, Hodges discloses wherein said download controlling message includes a broadcast message, said method comprising steps of:

- Issuing said broadcasting message from said source computer to said plurality of target computers indicating availability of said computer file for download from said source computer, said broadcast message including at least one download qualifiying parameter (column 5, lines 22-30, column 7, lines 33-35, column 10, lines 20-45);

- Receiving said broadcast message at said plurality of target computer (column 5, lines 22-30, column 7, lines 33-35, column 10, lines 20-45);

- Determining for each target computer of said plurality of target computers that received said broadcast message whether or not said target computer already has said computer file (column 3, lines 60-67, column 4, lines column 7, lines 20-35);

- Determining for each target computer that does not already have said computer file in dependence upon said at least one download qualifying parameter whether or not said target computer qualifies to download said

computer file in response to said broadcast message (column 3, lines 60-67, column 4, lines column 7, lines 20-35);

- Downloading said computer file from said source computer to those target computers that do not already have said computer file and that qualify to download said computer file (column 5, lines 22-30, column 7, lines 33-35, column 10, lines 20-45);

- Monitoring how many target computers download said computer file in response to said broadcast message (column 5, lines 22-30, column 7, lines 33-35, column 10, lines 20-45);

- Adjusting at least one download parameter used in a following broadcast message issued by said source computer in dependence upon how many target computers downloaded said computer file in response to said broadcast message (column 11, lines 58-67).

As per claims 3, 24, 45, Hodges discloses wherein said at least one download qualifying parameter is adjusted such that a probability that a particular target computer will qualify to download said computer file on the basis of said at least one download qualifying parameter increases as time progresses (column 11, lines 58-67).

As per claims 4, 25, 46, Hodges discloses wherein a number of target computers not having said computer file decreases as time progresses (column 3, lines 60-67, column 4, lines column 7, lines 20-35).

As per claims 5, 26, 47, Hodges discloses wherein said at least one download qualifying parameter is adjusted such that a number of target computers downloading said computer file in response to said broadcast message does not exceed a threshold level (column 3, lines 60-67, column 4, lines column 7, lines 20-35).

As per claims 6, 27, 48, Hodges discloses wherein each target computer has a priority level parameter indicating a position within a priority hierarchy and said at least one download qualifying parameter specifies which priority level parameters a target computer must have to qualify to download said computer file (column 11, lines 58-67).

As per claims 7, 28, 49, Hodges discloses wherein said at least one download qualifying parameter includes a random selection control parameter used in combination with a quasi-random parameter generated by a particular target computers to control whether or not said particular target computer qualifies to download said computer file (column 11, lines 58-67).

- As per claims 8, 29, 50, Hodges discloses wherein said broadcast message includes time range data specifying a range of times within which target computers qualifying to download said computer file in response to said

broadcast message should download said computer file (column 5, lines 22-

30, column 7, lines 33-35, column 10, lines 20-45).

As per claims 9, 30, 51, Hodges discloses wherein each target computer that

qualifies to download said target file in response to said broadcast message

initiates downloading at a time quasi-randomly selected within said range of time

(column 5, lines 22-30, column 7, lines 33-35, column 10, lines 20-45, column 11,

lines 58-67).

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As per claims 10, 31, 52, Hodges discloses wherein said broadcast message

includes a network address of said source computer (column 10, lines 19-60).

As per claims 11, 32, 53, Hodges discloses wherein a target computer that has

downloaded said computer file subsequently acts as a source computer (column

5, lines 22-30, column 7, lines 33-35, column 10, lines 20-45).

- As per claims 12, 33, 54, Hodges discloses wherein upon receipt of said

   computer file said target computer issues prompts seeking user input

   specifying how said computer file should be used (column 5, lines 22-30,

   column 7, lines 33-35, column 10, lines 20-45).

As per claims 13, 34, 55, Hodges discloses wherein said computer file is a virus definition data file for use by an ant-virus computer program (column 2, lines 22-35, column 4, lines 26-30, 47-59, column 5, lines 20-33).

As per claims 14, 35, 56, Hodges discloses wherein at least portions of said computer network comprises internet networks links (column 6, lines 20-25).

As per claims 15, 18, 21, 36, 39, 42, 57, 60, 63, Hodges discloses wherein download controlling message includes a retry message, said method comprising the steps of:

- Sending a download request from one of said plurality of target computers to said source computer, said download request including information identifying said one of said plurality of target computers (column 4, lines 48-55, column 5, lines 1-5, 24-27, column 7, lines 33-35);

- Receiving at said source computer said download request from said one of said plurality of target computers (column 4, lines 48-55, column 5, lines 1-5, 24-27, column 7, lines 33-35);

If said demand level is less than a predetermined threshold level, then sending said computer file from said source computer to said one of said plurality of target computers (column 3, lines 60-67, column 4, lines column 7, lines 20-35);

If said demand level is greater than a predetermined threshold level, then sending said retry message to said one of said plurality of target computers indicating a delay period after which said one of said plurality of target computers

may reissue said download request to said source computer (column 3, lines 60-

67, column 4, lines column 7, lines 20-35);

- Upon expiry of said delay period reissuing said download request from said

  one of said plurality of target computers to said source computer (column 4,

  lines 48-55, column 5, lines 1-5, 24-27, column 7, lines 33-35).

Conclusion

Any inquiry concerning this communication or earlier communications from

the examiner should be directed to Barbara N Burgess whose telephone number

is (703) 305-3366. The examiner can normally be reached on M-F (8:00am-

4:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the

examiner's supervisor, Ario Ettinene can be reached on (703) 308-7562. The fax

phone number for the organization where this application or proceeding is

assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application

or proceeding should be directed to the receptionist whose telephone number is

(703) 305-3900.

<div style="text-align: right;">

Barbara N Burgess
Examiner
Art Unit 2157

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December 15, 2003

MOUSTAFA M. MEKY
PRIMARY EXAMINER